THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.7843 of 2006

ORDER:

The only grievance of the petitioner is that the respondent having invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Securitisation Act'), has also initiated proceedings under Multi State Cooperative Societies Act 39 of 2002 (for short 'MSCS Act') by referring the matter to the Arbitrator and the Arbitrator had passed the award. The respondent has no such power to proceed under the provisions of two different acts for the purpose of recovery of amounts, and they should have chosen any one of them for the purpose of recovery of amounts due to them.

There is no necessity of going into all the details.

The Division Bench of this Court in W.P.No.14201 of 2004 dated 1.11.2004 held as under:

> "Accordingly, we will dispose of the writ petition with a direction that the respondent Bank will proceed pursuant to the notice issued under Section 13(2) of the SERFAESI Act and recover the debt on the realization of the sale proceeds from out of the secured assets, and remaining shortfall will be recovered by proceeding further with the proceedings taken before the Debt Recovery Tribunal. Till assets are sold and sale proceeds are realized by the bank, proceedings before the Debt Recovery Tribunal shall be kept in abeyance".

Accordingly, the writ petition is disposed of in the light of the above order directing the respondent Bank to proceed with recovery of debt on the realization of sale proceeds from out of the secured assets, and remaining shortfall will be recovered by proceeding further in the proceedings taken before the Arbitrator under the MSCS Act. Till the

assets are sold and sale proceeds are realized by the bank, the proceedings in pursuance of the Award passed by the Arbitrator shall be kept in abeyance.

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C.V.RAMULU, J

Date: 1.9.2006

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.7843 of 2006

1.9.2006

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.7843 of 2006

Dated: 1st September, 2006

Between:

M/s Foamex India (P) Ltd.,
rep. by its Managing Director Omeshwar Baldawa.

.. Petitioner

and

A.P. Mahesh Cooperative Urban Bank Ltd.,
rep. by its Branch Manager.

.. Respondent